SUBJECT INDEX

PAGE

Additional statement of the case 1

Summary of argument 5

Argument 7

I.

Neither of respondents has ever been the "statutory representative" of first cameramen 7

II.

Since petitioner was not an employee at the time the closed-shop contracts here involved were executed, the rule of law enunciated in the Steele, Tunstall and Graham cases is not applicable 8

III.

The closed-shop contracts which precluded petitioner from obtaining employment were valid, both under the National Labor Relations Act and the laws of the State of California 15

IV.

District Court had no jurisdiction herein by virtue of any of the provisions of the anti-trust laws 18

Conclusion 21

Appendix: Excerpts from the case of Steele v. Louisville, etc., 323 U. S. 192, at 194, 89 L. Ed. 173 at 179 .....App. p. 1

TABLE OF AUTHORITIES CITED

CASES — PAGE

Allen Bradley Co. v. Local Union No. 3, 325 U. S. 797, 89 L. Ed. 1939 19

Brotherhood of Locomotive Firemen, etc. v. Tunstall, 163 F. 2d 289 9

Colgate-Palmolive-Peet Company v. National Labor Relations Board, 338 U. S. ..... (decided Dec. 5, 1949) 6, 10, 11, 13, 14, 15, 16, 17, 19

Graham, et al. v. Brotherhood of Locomotive Firemen and Enginemen, 338 U. S. ...., 94 L. Ed. 1 ..... 5, 7, 8, 10, 11, 13

Hunt v. Crumboch, 325 U. S. 821, 89 L. Ed. 1954 20

Steele v. Louisville & Nashville R. R. Co., 323 U. S. 192, 89 L. Ed. 173, 65 S. Ct. 226 ..... 5, 7, 8, 10, 11, 12, 13, 16

Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U. S. 210, 89 L. Ed. 187, 65 S. Ct. 235 ..... 5, 7, 8, 9, 10, 11, 12, 13

United States v. Hutcheson, 312 U. S. 219, 85 L. Ed. 788 20

Wallace Corporation v. National Labor Relations Board, 323 U. S. 248, 89 L. Ed. 216 ..... 15, 16

STATUTES

National Labor Relations Act, Sec. 9(a) 12

United States Code Annotated, Title 15, Sec. 17 ..... 18, 19

United Ctates Code Annotated, Title 28, Sec. 41(23) 18

United States Code Annotated, Title 28, Sec. 1331 ..... 6, 17

IN THE

Supreme Court of the United States

October Term, 1949
No. 471

CURTIS COURANT,

Petitioner,

vs.

INTERNATIONAL PHOTOGRAPHERS OF THE MOTION PICTURE INDUSTRY LOCAL 659, etc., *et al.*,

Respondents.

Brief of Respondents International Photographers of the Motion Picture Industry Local 659, Etc., Herbert Aller, and International Alliance, Etc., in Opposition to Petition for a Writ of Certiorari.

Additional Statement of the Case.

Respondent Alliance was not during any time material herein—from on or about the 28th day of May, 1941, when Petitioner arrived in the United States [R. 9], until April 6, 1948, the date upon which his Complaint was filed in the District Court [R. 16]—either the certified or the designated bargaining representative of first cameramen in the motion picture industry in California. As appears from the Direction of Election (14 NLRB 1162 at 1163) and Decision of Certification of Representatives (15 NLRB 224 at 240), each *In the Matter of Motion Picture Producers and Distributors of America, Inc., et al.* [R.

5-6], first camermen were specifically excluded from the election and from the list of crafts set forth in the Certification. It is affirmatively alleged in Paragraph III of the Complaint [R. 5] that "all employees engaged in the production of motion pictures as aforesaid, *with the exception of first cameramen** (also known as directors of photography) have designated the IATSE" (meaning Respondent Alliance) "as their exclusive bargaining agency on wages, hours and working conditions." Furthermore, it is alleged in Paragraph IV of the Complaint [R. 5-6] that "the National Labor Relations Board did certify the IATSE and its various local unions composed of members engaged in the production of motion pictures as aforesaid as the exclusive bargaining agency for all of said employees, *with the exception of first camermen.*"

Respondent Local has never been the certified bargaining representative of first cameramen for, as alleged in Paragraph VII of the Complaint, "ever since December 10, 1942, Local 659 has been *designated* by a majority of first cameramen in said State of California as their exclusive bargaining agency on wages, hours and working conditions." [R. 7.]

"From prior to 1941 and until the end of 1942," to use the language appearing in Paragraph VI of the Complaint, the American Society of Cinemaphotographers—not a party to this litigation—was the designated collective bargaining representative of first cameramen.

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*Italics appearing in this brief are ours unless otherwise indicated.

At all times since prior to 1941 and until the 31st day of December, 1948 [R. 8], closed-shop contracts existed between the employers of first cameramen in the State of California and the *designated* bargaining representatives of such craft, to wit, with American Society of Cinematographers, "from prior to 1941 and until the end of 1942" [R. 6] and "from on or about January 1, 1943, to and including the date of the filing of this complaint" with Respondent Local [R. 6]. The last closed-shop contract covering first cameramen was executed in writing as of January 1, 1946, and by its terms expired December 31, 1948 [R. 8].

It, therefore, appears that when Petitioner arrived in the United States from Poland on or about the 28th of May, 1941 [R. 9], the American Society of Cinematographers was the *designated* bargaining representative for first cameramen and continued as such to on or about December 10, 1942 [R. 7], upon which date all members of the American Society of Cinematographers, *i. e.*, first cameramen, *designated* Respondent Local as their collective bargaining agent, in which capacity it has ever since acted [R. 7-8].

Neither Respondent Alliance nor Respondent Local is a company-dominated labor organization. It is alleged in Paragraph III of the Complaint [R. 5] that "the IATSE" (meaning Respondent Alliance) "is not and never has been established, maintained or dominated by any employer engaged in the production of motion pictures;" [R. 5] and it is alleged in Paragraph VII of the Complaint [R. 7]

that "Local 659" (meaning Respondent Local) "is not established, maintained or dominated by any employer."

It is alleged in Paragraph IX of the Complaint [R. 9] that ever since the first day of July, 1941, Petitioner has been a resident of the State of California, and since July 11, 1947 (prior to date Complaint was filed herein), has been a citizen of that state; it is alleged in Paragraph III of the Complaint [R. 3] that Respondent Alliance has an office and place of business within "said district," referring to the geographical district over which the District Court of the United States for the Southern District of California, Central Division—in which Court the Complaint was filed—has jurisdiction, and that members of the local unions of Respondent Alliance are employed by all employers engaged in the production of motion pictures within the State of California [R. 4]. Moreover, it is alleged that Respondent Local is a chartered local union of Respondent Alliance and is engaged in representing and acting for employee members within said district, wherein it maintains its principal office [R. 7]. Diversity of citizenship is not alleged; as above noted, its absence affirmatively appears.

We find nothing in the Transcript of Record to support the statement, appearing at the bottom of page 3 of the Petition herein, that petitioner "was given a job as first cameraman, and upon forms furnished by respondents, designated then as bargaining agent * * *"

Summary of Argument.

It is the position of Respondents, to be developed hereinafter, that the Petition for Writ of Certiorari herein should be denied for the following reasons: (a) Since neither of the Respondents was ever certified as the bargaining representative of first cameramen, neither has ever been the "statutory representative" of such craft; (b) Petitioner, at best, being merely an employable and not an employee at the time the closed-shop contracts involved herein were executed, the rule of law enunciated in the *Tunstall-Steele-Graham* cases is not applicable; (c) the closed-shop contracts, entered into by Respondents as *bargaining representatives,* which precluded Petitioner from obtaining employment, were, at the time of their execution and during their existence, valid, both under the National Labor Relations Act (Wagner Act) and the laws of the State of California; hence, Petitioner has no cause of action over which the District Court has jurisdiction because of the existence of such closed-shop contracts; (d) the refusal of Respondents, as *labor organizations,* to admit Petitioner to membership does not create a right of action in Petitioner in any Court and, particularly, in District Courts of the United States in the absence of diversity of citizenship; (e) Petitioner, by his complaint, seeks to recover damages for an alleged tort consisting of an asserted wrongful interference with his right to work resulting from the synchronization of a closed shop and a closed union; in the absence of diversity of citizenship, District Courts of the United States do not

have jurisdiction over such tort actions; (f) the decision of this Court in the *Colgate-Palmolive-Peet Company* case supports the conclusion that even if Petitioner had been employed as a first cameraman, his discharge, pursuant to the operation of the closed-shop contracts, would not have created a cause of action in his favor over which District Courts have jurisdiction under Section 1331, 28 U. S. C. A., for the reason that such asserted cause of action would not arise under the Constitution, laws, or treaties of the United States; (g) the Anti-Trust Laws, by their terms, specifically exclude Respondent labor organizations from their purview; and (h) it is immaterial what rights Petitioner may have had under treaties to which the United States is a party for the reason that, as conceded by Respondents, Petitioner's complaint, so far as the question of jurisdiction in the District Court below is concerned, must be treated as though he were at all times a citizen of the United States.

ARGUMENT.

I.

Neither of Respondents Has Ever Been the "Statutory Representative" of First Cameramen.

As we have heretofore pointed out, the Complaint affirmatively established that Respondent Alliance has never been, during any of the time material herein, either the certified or the designated bargaining representative of first cameramen, and while Respondent Local has been the designated bargaining representative of such craft it has never been so certified by the National Labor Relations Board.

Hence, we submit that neither Respondent has ever been "the statutory representative of a craft" within the meaning of that term as used by this Court in *Steele v. Louisville & Nashville R. R. Co.*, 323 U. S. 192, 89 L. Ed. 173, 65 S. Ct. 226, and in *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210, 89 L. Ed. 187, 65 S. Ct. 235, and in *Graham, et al., v. Brotherhood of Locomotive Firemen and Enginemen*, 338 U. S. ....., 94 L. Ed. 1 (decided November 7, 1949). In the *Steele, Tunstall,* and *Graham* cases, the same labor organization was involved and it had been duly elected and certified as the bargaining agent of firemen—the employees involved —in accordance with and pursuant to the provisions of the Railway Labor Act.

Not having been certified as the bargaining representative of first cameramen, Respondent Local in entering into collective bargaining negotiations with the employers, as the *designated* representative of its first cameramen members, and in executing closed-shop contracts with such employers, covering wages, hours, and working conditions of first cameramen, was acting pursuant to authority vested

in it at common law and exercised no rights derived from the National Labor Relations Act. We submit that under the National Labor Relations Act, as it existed prior to its amendment in June of 1947, a bargaining representative, although designated as such by the employees which it represented, did not become a "statutory representative" unless such employees utilized the election processes of the Act with resultant certification.

II.

Since Petitioner Was Not an Employee at the Time the Closed-Shop Contracts Here Involved Were Executed, the Rule of Law Enunciated in the Steele, Tunstall, and Graham Cases Is Not Applicable.

If we assume *arguendo* that designation, as distinguished from certification, of a bargaining representative of itself constitutes such bargaining representative a "statutory representative," it, nevertheless, follows, we believe, that the rule of law enunciated by this Court in the *Steele, Tunstall,* and *Graham* cases has no application to the situation existing in the instant case for the reason that the persons discriminated against in those cases were *employees* represented, through operation of law, by the labor organization involved, whereas in the instant case Petitioner, not having been an employee nor a member of either Respondent, was not represented by either of them in any negotiations. Neither Respondent represented or purported to represent Petitioner. This Court, on the same day, December 18, 1944, handed down two decisions (the *Tunstall* and *Steele* cases, *supra*) and in the *Graham* case, *supra* (decided November 7, 1949), reaffirmed the rule of law there enunciated, which, for convenience, we shall refer to as The *Tunstall* Case Doctrine. After this Court

had settled the applicable law, the *Tunstall* case went back to the District Court for trial and subsequently reached the United States Court of Appeals for the Fourth Circuit and is reported as *Brotherhood of Locomotive Firemen, etc., v. Tunstall,* 163 F. 2d 289.

The factual situation forming the basis of The Tunstall Case Doctrine is best expressed in the following language of the Chief Justice, taken from 89 L. Ed. at page 192 (323 U. S. at 211):

> "This is a companion case to No. 45, *Steele v. Louisville & N. R. Co.,* decided this day (323 U. S. 192, *ante,* 173, 65 S. Ct. 226) in which we answered in the affirmative a question also presented in this case. The question is whether the Railway Labor Act, 48 Stat. 1185, c. 691, 45 USCA, Secs. 151 *et seq.,* imposes on a labor organization, acting as the exclusive bargaining representative of a craft or class of railway *employees,* the duty to represent all the *employees without discrimination because of their race.* The further question in this case is whether the federal courts have jurisdiction to entertain a non-diversity suit in which petitioner, a railway *employee* subject to the Act, seeks remedies by injunction and award of damages for the failure of the union bargaining representative of *his craft* to perform the duty imposed on it by the Act, to represent *petitioner and other members of his craft* without discrimination because of race."

It appears further from the decision in the *Tunstall* case that the Brotherhood of Locomotive F. & E. was, pursuant to the Railway Labor Act, *the certified bargaining agent of the plaintiff therein* and a large number of other *employees* similarly situated. The constitution of the Brotherhood specifically excluded Negroes from member-

ship. *No closed-shop contract existed.* Despite its legal obligation to fairly and without discrimination represent all *employees* for which it was the certified bargaining agent, pursuant to the Railway Labor Act, the Brotherhood entered into a contract with the railroad employers which froze Negroes on their present jobs, provided that promotions must be made from a "promotable pool," and that only white persons could thereafter be placed in such "promotable pools."

The opinion in the *Tunstall* case adopts the decision rendered the same day in its companion case of *Steele v. Louisville, etc.,* 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173, in which action the plaintiff therein voiced the same complaint as that asserted by Tunstall. From that opinion, we learn more of the facts involved in each case, and we quote therefrom in Appendix A hereof. The foregoing quotations taken from the *Tunstall* and *Steele* cases are sufficient, it seems to us, to clearly establish that the question therein presented to this Court bears no resemblance to that which the instant controversy presents. The distinction between the *Tunstall-Steele-Graham* cases and this action may be summarized as follows: (1) In the *Tunstall-Steele-Graham* cases, the Railway Labor Act was involved and no closed-shop contract existed (such a contract being invalid under that Act), whereas in the instant case the National Labor Relations Act is involved and a valid closed-shop contract does exist (*Colgate-Palmolive-Peet Company v. National Labor Relations Board,* 338 U. S. ..... (decided December 5, 1949)); (2) in the *Tunstall-Steele-Graham* cases, plaintiff therein was and for a long period of time had been actually *employed* by the railroad, and his *duly elected bargaining agent* made a contract deliberately discriminating against him solely because of his color, whereas in the instant action Petitioner was

not *employed* in any work classification over which Respondents have or assert jurisdiction, and neither Respondent was his bargaining agent; (3) in the *Tunstall-Steele-Graham* cases (as set forth in 163 F. 2d at 293, when the *Tunstall* action was tried on its merits after this Court had settled the law applicable) the Brotherhood "used its power *as bargaining agent* in violation of the rights of those *for whom it undertakes to bargain* and has thereby inflicted injury upon one of those *whom it professes to represent,*" whereas in the instant case neither Respondent is the bargaining agent of Petitioner, never has and did not at any time profess to represent him; and (4) the Railway Labor Act does not recognize closed-shop contracts (to the contrary, close-shop contracts are unlawful under that Act), whereas same are recognized as valid by the National Labor Relations Act and the laws of the State of California (*Colgate-Palmolive-Peet Company* case, *supra*).

Since Petitioner was not, when the closed-shop contracts were executed, employed by any employer with which Respondents had a closed-shop contract, and since, even as a permittee of Respondent Local, his three assignments of a sharply limited nature *in* 1945, *in* 1946, and *in* 1947 were not performed at any time when the closed-shop contracts herein were actually executed, he is a stranger to those contracts, a stranger to Respondents either as labor organizations or bargaining representatives, and a stranger to the employers with whom the closed-shop contracts were made. Respondents have never represented Petitioner as bargaining agent and have never professed to so represent him.

As unequivocally appears from the quotations, which we have above or in the Appendix hereto set forth, taken

from the *Tunstall-Steele* decisions, jurisdiction is vested in District Courts in actions under the Railway Labor Act against the bargaining agent, certified pursuant to such Act, by *employees,* only when such actions are brought by *employees* discriminated against in a contract negotiated by the bargaining agent professing to represent such *employees* and on whose behalf the bargaining agent undertook to bargain.

Under the National Labor Relations Act (Section 9(a)) and the Labor-Management Relations Act, 1947 (Section 9(a)), it is provided that:

> "Representatives designated or selected for the purposes of collective bargaining by the majority of the *employees* in a unit appropriate for such purposes, shall be the exclusive representatives of all of the *employees* in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. Provided, that any individual *employee* or a group of *employees* shall have the right at any time to present grievances to their employer, etc."

It is not open to question, not only from the decisions, but from the language immediately above quoted, which contains no uncertainty or ambiguity and calls for no interpretation or judicial conjecture, that under the National Labor Relations Act and the Labor-Management Relations Act, 1947, a designated or selected bargaining agent represents, undertakes to represent, and professes to represent only *employees* in the particular unit for which it is such bargaining agent. Such bargaining agent does not represent and no duty is imposed upon it by law to represent a mere employable, such as Petitioner. In the instant case, as appears from the face of the Complaint,

Respondent Local was the designated bargaining agent of the unit consisting of first cameraman *employed* in the Studios; Petitioner, not being so employed, is not within that unit and therefore was not a member of the craft of first cameraman. Respondent Local did not represent him and never undertook or professed to do so; it was not Petitioner's bargaining representative and has never represented him in negotiations or made any contract on his behalf or which would be binding on him.

Furthermore, we submit that even if it be further assumed *arguendo* that Petitioner was an employee in the unit of first cameraman within the meaning of the word "employee" as used in the *Tunstall-Steele-Graham* cases, nevertheless, Respondent Local, not being a "company-dominated" labor organization, in negotiating and executing a closed-shop contract, and, subsequently, in refusing Petitioner membership, *violated no law of the State of California and no provision of the National Labor Relations Act either as it existed prior to amendment by the Labor Management Act, 1947, or thereafter.*

We quote from the decision of this Court in *Colgate-Palmolive-Peet Company v. National Labor Relations Board,* 338 U. S. ..... (decided December 5, 1949), as follows:

> "We take it from this conclusion of the Board that there is no dispute as to the validity of the closed-shop contract as far as the Act is concerned. In *Algoma P. & V. Co. v. Wisconsin Empl. Rel. Bd.,* 336 U. S. 301, it was held that nothing in the Act precludes a state from prohibiting closed-shop contracts in whole or in part. We therefore also look to the law of the state where the closed-shop contract was made, here California, to determine its validity. We think it is clear, and do not understand the Board

to contend otherwise, that the closed-shop contract was valid under California law. *Shafer v. Registered Pharmacists Union Local 1172*, 16 Cal. (2d) 379; *Park & Tilford Import Corp. v. International Brotherhood of Teamsters, etc., Local 848*, 27 Cal. (2d) 599; *James v. Marinship Corp.*, 25 Cal. (2d) 721. * * * *The contract was valid under the Act and under state law.*"

Petitioner, therefore, has no cause of action over which a United States District Court, or, we submit, any other Court, has jurisdiction by reason of execution of closed-shop contracts by Respondent Local in its capacity *as a designated bargaining representative.* Does the refusal of Respondent Local to admit Petitioner to its membership, *as a labor organization,* give rise to any cause of action in his favor over which District Courts of the United States have jurisdiction in the absence of diversity of citizenship?

Membership in a *labor organization,* even by an employee—let alone a mere employable—and even though such labor organization has a closed-shop contract covering the work classification in which such employee is engaged, *is not a right granted by the National Labor Relations Act.* Respondent Local, *as bargaining representative,* had a legal right under the laws of California and under the National Labor Relations Act to enter into the closed-shop contracts (*Colgate-Palmolive-Peet Company* case, *supra*). Respondent Local, we repeat, as a *labor organization,* is not and never has been required under the National Labor Relations Act to admit any person to membership even though he be an employee in the unit for which such organization is the designated bargaining representative.

The refusal of Respondent Local, as a *labor organization,* to admit Petitioner to membership does not of itself

give rise to a cause of action in any court, certainly not in a District Court in the absence of diversity of citizenship; the execution of closed-shop contracts by Respondents, in their capacity of *bargaining representatives,* likewise, creates no cause of action over which District Courts have jurisdiction since the legal right to execute such contracts was vested in Respondents by the laws of California and the National Labor Relations Act (Wagner Act).

III.

The Closed-shop Contracts Which Precluded Petitioner From Obtaining Employment Were Valid, Both Under the National Labor Relations Act and the Laws of the State of California.

In *Colgate-Palmolive-Peet Company v. National Labor Relations Board,* 338 U. S. ..... (decided December 5, 1949), this Court unequivocally declared that the rule of law set forth by it in *Wallace Corporation v. National Labor Relations Board,* 323 U. S. 248, 89 L. Ed. 216, is applicable only when the labor organization involved is a company-dominated union. In the same case, this Court held that closed-shop contracts executed in California by a labor organization, acting as the bargaining representative of its members, were valid, both under the National Labor Relations Act as it existed prior to the Labor-Management Relations Act, 1947, and under the laws of the State of California. It affirmatively appears from the Complaint that the closed-shop contracts involved herein were executed in California prior to the adoption of the Labor-Management Relations Act, 1947, with California employers and covered employees in California. Therefore, when Respondent Local, as the designated bargaining

representative of first cameramen, executed such closed-shop contracts, it violated neither the National Labor Relations Act (Wagner Act) nor the laws of the State of California. Furthermore, when Respondent Local, as a labor organization, as distinguished from a designated bargaining representative, excluded Petitioner from membership, it was not acting in violation of nor pursuant to any power vested in it by or derived from the National Labor Relations Act (Wagner Act). As set forth by Mr. Justice Jackson in the *Wallace* case, 323 U. S. at 271, 89 L. Ed. at 235:

> "Whether the closed shop, with or without the closed union, should or should not be permitted without supervision is in the domain of policymaking, which it is not for this Court to undertake."

And as said by Mr. Chief Justice Stone in the *Steele* case, 323 U. S. at 204, 89 L. Ed. 184, "* * * the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership." We feel that we could, with confidence, rest our entire case on the words of Mr. Justice Minton, when speaking for the majority of this Court, in the *Colgate-Palmolive-Peet Company* case, *supra,* he said:

> "One of the oldest techniques in the art of collective bargaining is the closed shop. It protects the integrity of the union and provides stability to labor relations. To achieve stability of labor relations was the primary objective of Congress in enacting the National Labor Relations Act. *Congress knew that a closed shop would interfere with freedom of employees to organize in another union and would, if used, lead inevitably to discrimination in tenure of employment. Nevertheless, with full realization that*

there was a limitation by the proviso of Section 8(3) upon the freedom of Section 7, Congress inserted the proviso of Section 8(3). It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute.

* * * * * * * *

". . . While *the proviso of Section 8(3) permits a closed-shop contract,* it does not permit one made with a union 'established, maintained, or assisted by any action defined in this Act as an unfair labor practice.' "

We repeat, it is affirmatively alleged in the Complaint herein that neither Respondent is established, maintained, or dominated by any employer.

The decision of this Court in the *Colgate-Palmolive-Peet Company* case, *supra,* supports the conclusion that even if Petitioner had been employed as a first cameraman and had been discharged, pursuant to the operation of the closed-shop contracts, no cause of action in his favor would have been thus created over which District Courts would have jurisdiction under Section 1331, 28 U. S. C. A., for the reason that such asserted cause of action would not arise under the Constitution, laws, or treaties of the United States. Actually, what Petitioner seeks by his complaint is to recover damages for an alleged tort consisting of an asserted wrongful interference with his right to work resulting from the synchronization of valid closed-shop contracts and a closed union. We submit that in the absence of diversity of citizenship District Courts of the United States do not have jurisdiction over such a tort action.

IV.

District Court Had No Jurisdiction Herein by Virtue of Any of the Provisions of the Anti-Trust Laws.

Section 41(23), Title 28, U. S. C. A., grants jurisdiction to the District Courts "of all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies," and Section 15, Title 15, provides that "any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee." The foregoing are among the statutes of the United States which Petitioner claims vested jurisdiction in the District Court over the instant action. We submit that there is nothing in the Complaint which even remotely suggests that the cause of action sought to be described therein comes within the provisions of the Anti-Trust Laws. Section 17, Title 15, U. S. C. A., which is part of the federal statutes relating to monopolies and combinations, specifically excludes labor organizations from the terms of the Anti-Trust Laws. It reads as follows:

> "The labor of a human being is not a commodity or article of commerce. *Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor*, agricultural, or horticultural *organizations*, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid *or restrain individual members of such organizations from lawfully carrying out the*

legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."

This Court has on numerous occasions held that, irrespective of the effect of its action upon interstate commerce, a labor union acting alone, and not in combination with business men, does not violate the Sherman Anti-Trust Act. There are no allegations in the Complaint herein which even hint at any combination between Respondents and employers to restrain competition in, or to monopolize the marketing of, or fix prices of, any product of such employers moving in interstate commerce. The facts set forth in the Complaint in the instant case bear no resemblance to the situation which was before the Supreme Court of the United States in *Allen Bradley Co. v. Local Union No. 3,* 325 U. S. 797, 89 L. Ed. 1939. That the closed-shop contract possessed by Respondent Local, the operation of which precludes Petitioner from obtaining employment as a first cameraman with the employers with whom Respondent Local has such closed-shop contract, is a legitimate objective of organized labor, that is to say, that closed-shop contracts are valid and enforceable, is not, since this Court's decision in the *Colgate-Palmolive-Peet Company* case, *supra,* debatable. Not only are Respondents specifically excluded from the provisions of the Sherman Anti-Trust Laws by reason of the express terms of Section 17, Title 15, U. S. C. A., above quoted, but the rule of law enunciated by this Court in *Hunt v.*

Crumboch, 325 U. S. 821, 89 L. Ed. 1954; *United States v. Hutcheson,* 312 U. S. 219, 85 L. Ed. 788, and other cases, is controlling. It is only when labor organizations combine with non-labor groups to create business monopolies and to control the marketing of goods that the provisions of the Sherman Anti-Trust Laws become applicable. As said by this Court in the *Hutcheson* case, 312 U. S. at 232, 85 L. Ed. at 793:

> "So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under Section 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means."

And as said by this Court in *Hunt v. Crumboch,* 89 L. Ed. 1956, 325 U. S. at 825:

> "A worker is privileged under congressional enactments, acting either alone or in concert with his fellow workers, to associate or to decline to associate with other workers, to accept, refuse to accept, or to terminate a relationship of employment, and his labor is not to be treated as 'a commodity or article of commerce.' Clayton Act, 38 Stat. 730, 731, c. 323; Norris-LaGuardia Act (March 23, 1932), 47 Stat. 70, 90, 29 USCA, Section 101, 9 FCA, Title 29, Section 101. See also American Foundries v. Tri-City Central Trades Council, 257 US 184, 209, 66 L. Ed. 189, 199, 42 S. Ct. 72, 27 ALR 360."

Conclusion.

We do not discuss the question of whether Petitioner does or does not have any rights under the Treaty with Poland, or any other treaty to which the United States is a party, for the reason that we treat the case as though at all times Petitioner was a citizen of the United States. Whatever rights Petitioner may have under treaties to which the United States is a party—and we do not pause to discuss such rights, if any there be—same could rise no higher than his rights as a citizen of the United States, which he was during a portion of the time material herein. Respondents International Photographers of the Motion Picture Industry Local 659, etc., Herbert Aller, and International Alliance, etc., respectfully pray that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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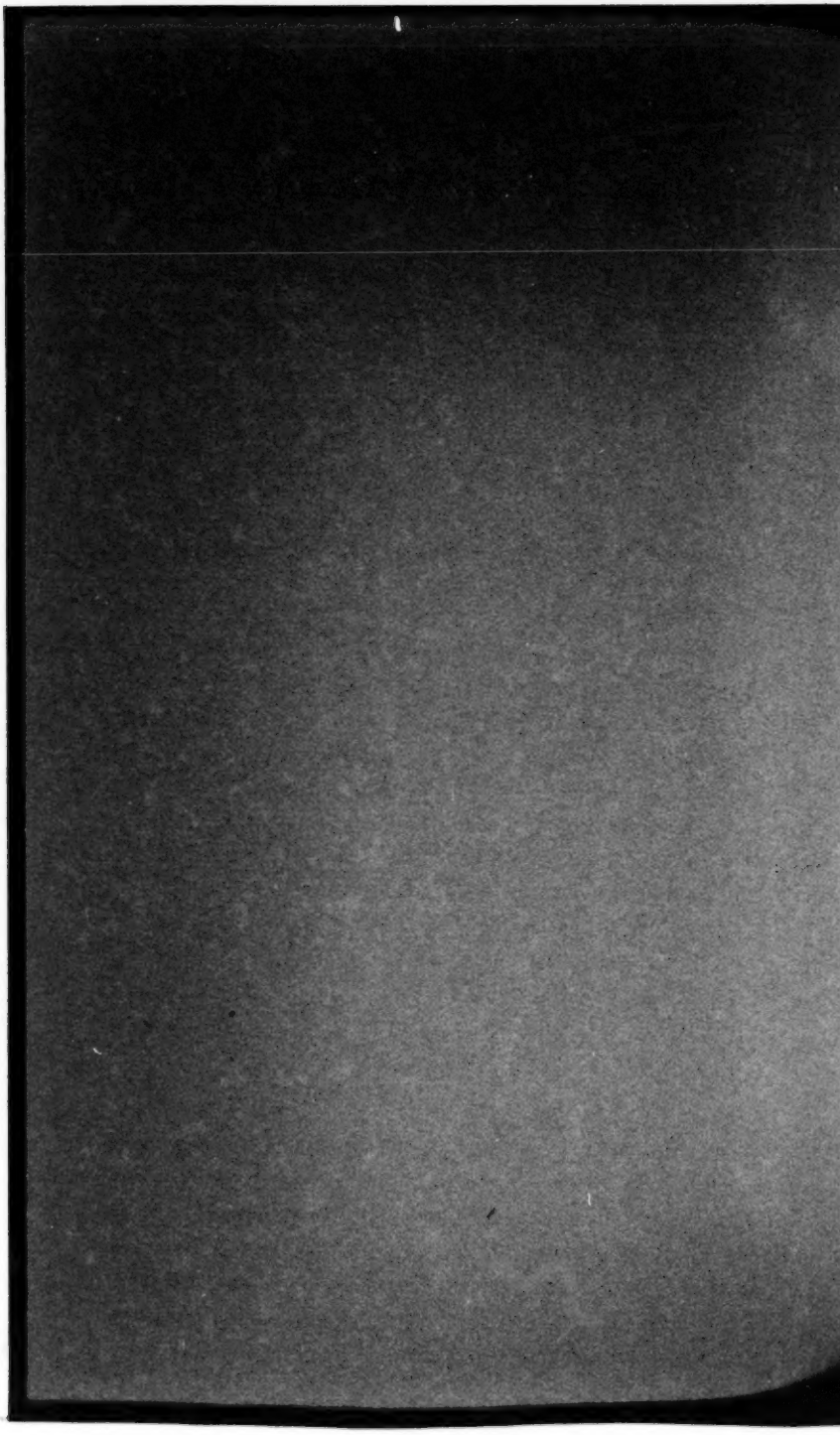

APPENDIX.

Steele v. Louisville, etc., 323 U. S. 192 at 194, 89 L. Ed. 173 at 179:

"The allegations of the bill of complaint, so far as now material, are as follows: Petitioner, a Negro, is a locomotive fireman *in the employ of respondent railroad,* suing on his own behalf and *that of his fellow employees* who, like petitioner, are Negro firemen employed by the Railroad. Respondent Brotherhood, a labor organization, is, as provided under Sec. 2, Fourth of the Railway Labor Act, the exclusive bargaining representative of the *craft of firemen employed* by the Railroad and is recognized as such by it and the members of the craft. The majority of the firemen *employed* by the Railroad are white and are members of the Brotherhood, but a substantial minority are Negroes who, by the constitution and ritual of the Brotherhood, are excluded from its membership. As the membership of the Brotherhood constitutes a majority of all firemen *employed* on respondent Railroad, and as under Sec. 2, Fourth the members because they are the majority have the right to choose and have chosen the Brotherhood to represent the craft, petitioner and other Negro firemen on the road have been required to accept the Brotherhood as their representative for the purposes of the Act.

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". . . On May 12, 1941, the Brotherhood entered into a supplemental agreement with respondent Railroad further controlling the seniority rights of Negro firemen and restricting their *employment.* The Negro firemen were not given notice or opportunity to be heard with respect to either of these agreements, which were put into effect before their existence was disclosed to the Negro firemen.

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". . . The Brotherhood has acted and asserts the right to act as exclusive bargaining representative of *the firemen's craft.* It is alleged that in that capacity it is under an obligation and duty imposed by the Act to represent the Negro firemen impartially and in good faith; but instead, in its notice to and contracts with the railroads, it has been hostile and disloyal to the Negro firemen, has deliberately discriminated against them, and has sought to deprive them of their seniority rights and to drive them out of *employment in their craft,* all in order to create a monopoly of employment for Brotherhood members.

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"The labor organization chosen to be the representative of the craft or class of *employees* is thus chosen to represent all of its members, regardless of their union affiliations or want of them."

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". . . The fair interpretation of the statutory language is that the organization chosen to *represent a craft* is to represent all its *members,* the majority as well as the minority, and it is to act for and not against those *whom it represents.*

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"We think that the Railway Labor Act imposes upon the *statutory representative of a craft* at least, as exacting a duty to protect equally the interests of *the members of the craft* as the Constitution imposes upon a legislature to give equal protection to the interests of those *for whom it legislates.* * * * We hold that the language of the Act to which we have referred, read in the light of the purposes of the Act, expresses the aim of Congress to impose on

the bargaining representative of a *craft or class of employees* the duty to exercise fairly the power conferred upon it in behalf of all those *for whom it acts,* without hostile discrimination against them.

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". . . . While the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership, it does require the union, in collective bargaining and in making contracts wth the carrier, to represent nonunion or minority union *members of the craft* without hostile discrimination, fairly, impartially, and in good faith. Wherever necessary to that end, the union is required to consider requests of nonunion *members of the craft,* etc.

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"In the absence of any available administrative remedy, the right here asserted, to a remedy for breach of *the statutory duty* of the bargaining representative to represent and act *for the members of a craft,* is of judicial cognizance."